

## **REMARKS**

After entry of this Amendment, the pending claims are claims 1, 3, 5, 7-15, 17-20, 25-27 and 33 of which claims 1 and 33 are in independent form. Claims 21-24 and 28-32 have been previously canceled. Claims 2, 4, 6 and 16 have been previously withdrawn.

Reconsideration is respectfully requested.

### **Rejection Under 35 U.S.C. §112**

Claim 33 was rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Support for the claim limitation “wherein the opening and the recess are not in communication with one another” can be found in Figure 13 of the originally filed application. Figure 13 is a cross-sectional view of Figure 7, the species (Species B) applicant elected to prosecute in the instant application. In addition, Figures 5, 16 and 20 also show a fixation device “wherein the opening and the recess are not in communication with one another.”

Claim 33 was also rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. The subject matter of claim 33 is disclosed in the original specification and would enable one skilled in the art to make and use a fixation device having a recess and an opening which are not in communication with each other. All embodiments of the fixation device, including the embodiment of Figures 7-13, incorporate a body 12. The body 12 has a recess 18 and an opening 24. (Specification, p. 7, lines 9-27) which, as shown in Figure 13 (as well as Figures 5, 16 and 20) are not in communication with each other.

### **Rejection Under 35 U.S.C. §102**

Claims 1, 7-11, 17-20 and 25 were rejected under 35 U.S.C. §102 in view of U.S. Patent No. 5,931,840 to Goble et al. (“the Goble ‘840 patent”). Claim 1 now recites “a graft interface member having a graft holding portion and an implant coupling portion having a distal end and a proximal end, the distal end of the coupling portion comprises a snap-fit type connection that is configured to be received and held in the recess [which is at the proximal end of the body] to permit the implant body to rotate independently of the graft interface member, the proximal end of the coupling portion is configured to be operably associated with the graft holding portion”

Applicant respectfully submits that the Goble ‘840 patent does not disclose, teach or suggest all of the limitations of claim 1. Specifically, there is no teaching or suggestion in the Goble ‘840 patent of a graft interface member having an implant coupling portion having a distal end and a proximal end, the distal end of the coupling portion comprising a snap-fit type connection that is configured to be received and held in a recess located at the proximal end. Instead, the Goble ‘840 patent shows the distal end of the implant coupling portion received and held in an opening located at the distal end of the implant body.

As all the features recited in independent claim 1, as amended, are not taught or suggested by the Goble ‘840 patent, Applicant submits that claim 1 is allowable over the Goble ‘840 patent. Dependent claims 7-11, 17-20 and 25 depend from independent claim 1 and are allowable for at least the same reasons as discussed above in connection with claim 1.

### **Rejection Under 35 U.S.C. §103(a)**

Claims 3, 5, 12-15, 26 and 27 were rejected under 35 U.S.C. §103(a) over the Goble ‘840 patent in view of U.S. Patent No. 6,517,542 to Papay et al. (“the Papay ‘542 patent”). Dependent claims 3, 5, 12-15, 26 and 27 depend from independent claim 1 and are allowable for at least the same reasons as discussed above in connection with claim 1. Therefore, the

rejection under 35 U.S.C. §103(a) over the Goble '840 patent in view of the Papay '542 patent is moot.

In light of Applicant's amendments and remarks, a notice of allowance is respectfully requested. Should the Examiner have any questions or concerns regarding the amendments, remarks or the above-identified application, then a telephonic interview with the undersigned is respectfully requested to discuss any such questions or concerns and to accelerate the allowance of the above-identified application.

No fee is believed due for this submission. However, should any fee be required, please charge all such fees to Jones Day Deposit Account No. 50-3013.

Respectfully submitted,

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